

(16)

Home (1952) Department.

Rt SERIES.

passed
by

G.O. NO. 2060

Dated

16.7.1952

FOR MYSORE STATE

[Despatch Abstract.]

From

Sri A. R. Rajaratnam, B.A.
Dt.Magistrate of South Kanara.

To

The Secretary to Government,
Home Department, Fort St.George,
M A D R A S - 9.

Sir,

CRIMINAL JUSTICE -- C.C.No.488/52 on the file
of the Additional First Class Magistrate (Prohibition)
South Kanara -- Appeal against acquittal -- proposal
'submitted.

-----:oOo:-----

I enclose a copy of letter R.C.No.1693/52/B4 dated 18.4.52 and opinion dated 29.4.52 of the Public Prosecutor, South Kanara which are self explanatory. The accused in C.C.488/52 on the file of additional First Class Magistrate (Prohibition) was charged for an offence under Sec 4(1)(b) of the Madras Prohibition Act i.e.manufacture of 16 drams of fermented toddy. The offence is punishable with imprisonment which may extend to two years or with fine which may extend to Rs.5000/- or with both. The case should not have been tried summarily. The Magistrate has based the acquittal on the ground that the toddy was not subjected to any test and that the accused did not consciously manufacture fermented toddy. For an offence under Section 4(1)(b) of the Act, it is not necessary to prove that the accused had the intention of manufacturing toddy. The toddy was tested with blue litmus paper and found to respond to the test for fermented toddy, and this fact was recorded in the mahazar. The accused has also admitted before the mahazar witnesses that he had manufactured fermented toddy for his own use as a cure for stomach ache. By not following the warrant procedure the Magistrate failed to give an opportunity to the prosecution to file the mahazar as an exhibit. This has resulted in miscarriage of justice. I therefore request that the Public Prosecutor, Madras may be directed to file an appeal in the High Court against the order of acquittal of the accused in C.C.No.488/52 on the file of additional I Class Magistrate (Prohibition) South Kanara.

2. I also enclose a copy of the judgement in C.C.No.488/52 in duplicate for necessary action.

Yours faithfully

[Signature]

For Dt.Magistrate.3/5/52

Enclosures:

- b3 ind - 2 p 5 7/2 (1) Two copies of R.C.1693/52/B4 dated 18.4.52 of Dt.Prohibition Officer.
 He mta : 37. 4/1 (2) Two copies of letter dated 29.4.52 of the Public Prosecutor South Kanara.
 Hm - mta & p 13 dia (3) Two copies of judgement in C.C.488/52

SR/29-5

[Signature]
29/5/52

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Copy of Rc.No.1693/52/B4 dated 13.4.52 from the District Prohibition Officer South Kanara to the Dt.Magistrate S.Kanara.

CASES - C.R.No.34/52 of Kaup Station - Acquittal in C.C.No.488/52 of the Additional First Class Magistrate (Prohibition) South Kanara - Revision by the high Court - Request.
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I am enclosing herein a certified copy of the Finding of the Addl.I.Class Magistrate (Prohibition) S.Kanara, in his C.C.No. 488/52 dated 28.3.52.

The case is one in which a licensed sweet juice tapper by name Aiyha Belchada of Bada village was charged under Section 4(1)(b) of the Madras Prohibition Act for the offence of manufacture of 16 drams of fermented toddy in a mud pot from a palmyrah tree tapped by him on 20.3.52.

3. The grounds of acquittal are.

- (a) that the toddy in question was not subjected to any test to enable the Court to hold that it was pure fermented toddy without any admixture of lime in it;
- (b) that the pot itself had a coating of lime;
- (c) that the contention of the accused was that he had no intention to manufacture fermented toddy, though he himself admitted the toddy to have been slightly fermented
- (d) that the accused would be deemed to have contravened the licence conditions only if it is shown that he had consciously manufactured fermented toddy;
- (e) that there was no indication that at the time of the accused limed the pot in question, he could have known or had reason to know that the coating of lime applied by him to the pot would have been ineffective or insufficient; and
- (f) that the discovery of the toddy in question was also before 2 P.M.

4. As regards (a) above, the 'finding' of the Magistrate is not based on any evidence and is not correct. The toddy was tested with blue litmus paper and found to respond to the test for fermented toddy and this fact was recorded in the mahazaar. There was no need for the prosecution to prove that the toddy was pure fermented toddy without any admixture of lime in it. All that the prosecution had to prove was that the toddy was fermented. This was established by the litmus test as recorded in the mahazar and also by the admission statement of the accused.

5. That the pot itself had a coating of lime does not mean that the toddy was not fermented. Under condition (2) of the licence granted to draw sweet-juice, all pots used for the drawing of sweet toddy should be effectively coated internally with lime to prevent fermentation and such coating should be renewed every time the pots are emptied and reattached to the trees. That the toddy in this case was found to have been fermented at about 9 A.M. when it was brought down from the tree for examination and that the accused himself admitted that it was fermented toddy are proofs positive that the pot had not been effectively coated internally with lime when it was attached to the spathe.

6. Regarding (c) above, it is not necessary for the prosecution to establish the element of intention on the part of the accused to draw fermented toddy. The accused did not establish that he had no such intention. On the other hand, it was on record in the Mahazaar that the accused admitted that he manufactured fermented toddy as he was suffering from stomach ache.

7. There was no question of infringement of licence conditions. The charge against the accused was for illicit manufacture of fermented toddy under section 4(1)(b) of the Madras Prohibition Act and not under Section 24 of the Act for Violation of licence conditions. That the discovery of the toddy in question was before 2 P.M. is therefore irrelevant to the case.

8. One fundamental point on which the Magistrate has

is that while the charge against the accused was for an offence under Section 4(1)(b) of the Madras Prohibition Act - an offence punishable with imprisonment which may extend to two years or with fine which may extend to Rs.5000/- or with both, he tried the case summarily. It is a warrant case and such a warrant case could not be tried summarily.

9. There has been a clear miscarriage of justice in this case. I therefore request that the case may be taken up to High Court on appeal.

Sd/- ~~-X-X-X-X-X-X-~~
Dt. Prohibition Officer
South Kanara, Mangalore.

/True copy/

SR/29-5

For Dt. Magistrate.

[Signature]
27.5.52

[Signature]
22/5

Copy of letter dated 29.4.52 from the Public Prosecutor,
Mangalore to the Collector of South Kanara.

C.R.No.34/52 of Kaup Station - Acquittal in C.C.No.488/52
A.F.C.M. South Kanara Revision to the High Court.

The Main point in this case is about the procedure adopted by the A.F.C.M. The question whether a case is triable as a summon case or a warrant case is to be decided by a reference to the complaint and to the notices issued to the accused and not merely by reference to the particular sections under which the conviction or acquittal takes place. As the complaint or notices are not before me, I am not in a position to say definitely what procedure the A.F.C.M. should have adopted in this particular case.

However, from the order itself it could be seen that the A.F.C.M. seems to have lost sight of the fact that the case is one under Sec 4(1) (b) of the Madras Prohibition Act and seems to have viewed it as though the charge is one under Sec.24 of the same Act.

Further from the order itself the A.F.C.M. appears to have been aware that the case was one under Section 4(1)(b) and he should have ordinarily tried it as a warrant case. Much depends on whether there has been an actual failure of justice. From the letter of the D.P.O. dated 18.4.52 to the Dt. Magistrate, it would appear that failure of justice in fact has taken place in this case. I have nothing else to base my opinion on. From the judgement and the letter referred to above which are the only two documents sent to me, I am of the opinion that this is a fit case to be taken on revision to the High Court.

Sd. M.M.Prabhu.
30.4.52

Certified copy of the order in C.C.No.488/52 and the Dt.Prohibition Officer's letter to the Dt.Magistrate which were sent to be are herewith returned.

Sd.M.M.Prabhu.
30.4.52.

/true copy/

For Dt. Magistrate. 31.5.5
Pc. Inspector.

915

Criminal register No.25: Register of summary trials by the
Additional I class Magistrate (Prohibition) South Kanara during the
year 1952.

1.Serial No. : 488/52

2.Date of the commission of the offence: 20-3-52

3. Date of the report or complaint: 20-3-52

4. Name of the complaint: P.S.I. Special Force Udipi

5. Name, parentage and residence of) Aitha Belchada licenced tapper
the accused person.) son of Thonda Bada

OFFENCE:		Value of property in respect of which offence committed.
Complained of.	Proved if any.	
6	7	8

Manufacture of 16 drams of fermented toddy-(4(a)(b)

9.Prisoner's plea: Denies and says that he has sufficiently limed
the pot but the toddy get fermented a little.

10.Finding and in the case) In this case the toddy in question has
of a conviction a brief)
statement of the reasons) not been subjected to any test to enable
thereof.) the court to hold that it was pure
fermented toddy without any admixture of
lime in it. The pot itself has a coating
of lime. The accused's own case is that
he did lime the pot and he had no

11. Sentence or other order.

12. Date on which the proceedings

~~-2-~~

ention to manufacture toddy. He however concedes that it was slightly fermented.

The accused is a licensed tapper and he would be contravening the license conditions if it shown that he had consciously - manufactured fermented toddy. In this case the xircumstances do not indicate that at the time he limed the pot in question he could have had known or had reason to know that the coating of lime applied by him to the pot could be in effective or in-sufficient.

The discovery of this toddy in question was also before 2 P.M (9A.M) Hence the accused could not be charged for retaining it beyond the stipulated hours.

In these circumstances I hald that there is no sufficient material to convict the accused. Therefore I find him not guilty and acquit him. His bond shall be cancelled and he set at liberty.

The mud pot will be returned to the accused.

Sd/ S. Joshua

28.3.1952

Addl. I class Magistrate
(Prohibition)
South Kanara.

/True Copy/

19/5

[Signature]
For Dt. Magistrate. 27.3.52

98116/52

54/6/6

Home Department

Memo.No. 98116 Cb@ / 52-1

dated 6.6.52

Criminal Justice - Appeal against acquittal - C.C.No
on the file of the A.F.C.M (Prohibition)

South Kanara / 52
Application.

Ref:- From the D.M., South Kanara No. C 3.3014/52
01-28-5-52

pl. e.

Referred to the Public Prosecutor, Madras for remarks

for which he is requested to offer not later than 15-6-52.

12/5.6.52
5/6/52

1/6/52

To
The P.P., Madras.

1/9/52

Note:- The date of judgment is 28-3-52. The three months'

time expires on 27-6-52. Six months' time expires on
27-9-52.

12/15.6.52
5/6/52

1/6/52

Done
K. G.
7.6.52
with a copy of
pl. e. and (M)
in orig. to be
returned with reply

Sri V.T.Rangaswami Ayyangar, B.A.B.L.,
Public Prosecutor,

To
The Secretary to Government,
Home Department, Madras.

Opn.No. 101/52 dated 16-6-52.

Sir,

Sub: Absenteeism against acquittal - C.C.No.488/52, A.F.C.
(Prohibition), South Kanara - Forwarding opinion.

109624

With reference to Memorandum No. 98116 Courts II/52-1, Home, dated 6th June 1952, I have the honour to give below my opinion in the above matter.

2. The papers received for reference are returned herewith.

Opinion.

The accused had a licence for drawing sweet toddy and there had been enough of lime in the opinion of the learned Magistrate so that the recovered fermented toddy under the circumstances set forth by the prosecution could not render him liable and I should think that

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the reasoning ~~given~~ cannot be said to be so perverse as to warrant
interference in an appeal against acquittal and so an appeal against
acquittal is not likely to be successful.

V.T. Ravi ~~22001~~
Public Prosecutor. 16/6

Urgent

P. J. S. S. S.

Home Dept

15

10116/52.

Memorandum No. 98116 Ch II/52-1 of 26.6.52

40/27/6

Criminal justice - Appeal against acquittal - C.C. No. 488 of 52 on the file of the A.F.C.M. (Prohibition), South-Kanara - Application.

P 11 of.
P 13-14 of.

Ref: - Memorandum No. 98116 Ch II/52-1 of 6.6.52
From the P.P. Madras Opn. No. 101/52
of 16-6-52.

P 1 of.

P x on 1st of.

The attention of the P.P. Madras is invited to the observation of the D.M., South Kanara in his letter NO. C.S. 3014/52 of 28-5-52 forwarded to him with the ^{being} ~~magistrate~~ first cited, namely, that the offence ~~is punishable~~ ^{is punishable} with imprisonment which may extend to two years or with fine which may extend to Rs 5000/- or with both ~~and that the case~~

46

re case,
~~should~~ should not have been tried summarily. Cf. x on 421 Cf.
~~the P.P. Madras~~ ^{and he} is requested to offer ~~not~~
~~later than 5-7-52~~, his specific remarks
 on this point, not later than 5.7.52

26-6-52

52
 A
 28/6/52

Spelly
 28/6

5
 The P.P. Madras
 (with @) to be instructed
 (R.D. 6-7-52)

Judicial Department
 FROM Sri. V.T.Rangaswami Ayyangar, To The Secretary to Government,
 B.A., B.L., Home Department
 Public Prosecutor, Madras.
 Madras.

 Opinion No.101/52 Dated 1st July 1952

Sir,

Sub: Appeal against acquittal - C.C.No.488/52 -
 Addl. First Class Magistrate, (Prohibition)
 South Kanara - Application -

Ref: Memorandum No.98116 Courts II/52-1, Home, dated
 . 26th Jun 1952.

Although the accused was charged actually under
 Sec. 4 (1) (b) of the Madras Prohibition Act, in my opinion
 he being the licensee for drawing sweet toddy, omission to comply
 with some of the provisions of the licence would probably fall under
 Sec. 24 of the Prohibition Act which is triable as a summary
 case. Hence notwithstanding the fact that the charge sheet was
 laid under Sec. 4 (1) (b), omission to follow the warrant
 procedure could not be said to be vitiating the result of the
 trial. Moreover the prosecution having allowed the case to be
 tried in the summary manner adopting the summons procedure
 could not be heard on an appeal against acquittal that the
 procedure adopted was contrary to law. Section 337 Criminal
 Procedure Code could also cure any such defect.

2. The enclosre is herewith returned.

V.T. Rangaswami
 Public Prosecutor. 1/7.

13/5 16
 1-11-52
 118082
 27
 P.T.

98116/52

G.O.Rt.No.

2060

Dated

16.7.52

HOME DEPARTMENT (PUNJAB)

19

CRIMINAL JUSTICE - Appeal against acquittal -

C.C.No. 488 of 52 on the file of the A.F.C.M. (Prohibition)

South Kanara

Application - Declined

Read:- From the D.M., South Kanara No. C.3.3014 of 52
From the P.P., Madras, Opn. No. 101 of 52 of 16.6.52
8.1.7.52
(p 174)

ORDER

The Government do not consider it advisable to appeal to the High Court against the acquittal of the accused by the Additional First Class Magistrate (Prohibition), South Kanara No. 488 of 52 on his file.

2. A copy of the opinion of the Public Prosecutor, Madras is forwarded to the D.M., South Kanara for information.

the D.M., South Kanara
(with copy of 13-14 of 52 of 172A-
and 14 of 52 of 172A-
copy to the P.P.,
Madras.

NOTE:- The draft order above is in accordance with the opinion of the P.P., Madras.

If the Government differ from the Public Prosecutor, Madras and propose to prefer an appeal, the Advocate General should ordinarily be consulted before orders preferring an appeal are issued.

The date of judgment 28-3-52
3 months time expires on 27-6-52
6 months time expires on 27-9-52

development sept may see before issue.

19.6.52
20.6.52

20.6.52

J.S. P.T.

13

20

Summary trial the case is said to
be below the law: p.p. has not offered
his opinion on this.

10.10
20/6/82

Submitted. Under Secn. 260 Cr.P.C.
a District Magistrate or any Magistrate of the first class
specially empowered in this behalf by the State Govt.
may try in a summary way any case in which the
offence is not punishable with death, transportation
for life or imprisonment for a term exceeding six months.

p 291 of
P.P. (Ant. Act).

ibid

The offence in this case is under Secn. 4(1)(a) of the
Madras Prohibition Act and it is punishable with
imprisonment which may extend to two years or with
fine which may extend to 5000/- or with both.

CPX m/1/27.

ibid

In his letter on pt of. the S.D. Magistrate of South Kanara
has stated that the case should not have been tried
summarily. As the P.P. has not offered any remarks
on this point, it is for consideration whether the ^{above} observation
of the D.M. may be brought to his notice and he
may be requested to offer his specific remarks
on this point. Subject to above a draft memo
is submitted for approval. Issue

ibid

10
5.6.52
26.6.52

26/6/82

p. 15-6CF
p. 17CF

Issued as Memo No 98116 cts II / 52-1 dated 26.6.52
From the P.P., Madras Opn No 101/52 dated 1.7.52

p. 17 CF

~~with reference to~~ ^{M. see to} J.S. note at the top of p. 2 ante
and the memo. at pp 15-16 ~~cf.~~
The P.P., Madras has stated that although the
accused was actually charged under section 4(v)(b)
of the Madras Prohibition Act, ^{the} omission to comply
with the provisions of the licence, (the accused
being a licensee), would in his opinion probably
fall under section 24 of the Prohibition Act which
is triable as a summary case and that, notwithstanding
the fact that the charge sheet was
laid under section 4(v)(b), omission to follow
~~the~~ the warrant procedure could not
be said to be vitiating the result of the trial.
He has also stated that the prosecution, having
allowed the case to be tried in a summary
manner adopting the summons procedure,
will be estopped ~~is~~ from arguing in appeal
that the procedure adopted was contrary to
law and that any such defect could ^{also} be
cured under section 537 Cr.P.C.

it is

KSR
3.7.52

2. Accordingly in the circumstances,
it is for orders whether the
draft order at p. 1 ante
may issue. Dev. (Pro. and Ex.)
may see before issue

16/6/52
on p. 1 ante
16/6/52

47.1952
J.S. 16/6/52
W.S.

75220
Home no. 921
98116 P. II / 52-3
dated 4.7.52

Dev (pro & ex)

Note from p. 1 ante may be perused.
In the circumstances stated by the P.P.



~~4~~

22
Mr. J. A. up 12cf. the draft order in
planté maybe ~~accepted~~ ^{accepted} - the
file returned to Home.

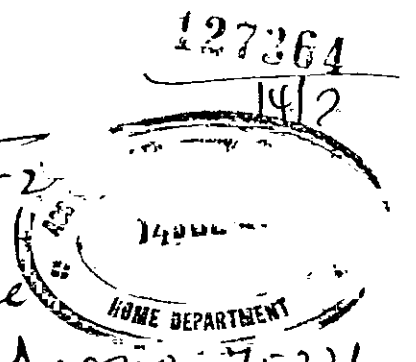
by
8-7-52
29/7/52

By
10-7-52

25/7/52

12-7-52

Home



Home Dept. Bureau: 75226.
S/52-1
12-7-5

The draft order at planté may

16-7-1952

issue
15-7-1952
16-7-52

Issue as BOR 2060 H. d 16-7-52